

CHAPTER 24

AMENDMENT OF ORDINANCE

Sec. 24-1. Initiation of Amendments.

Whenever the public necessity, convenience, general welfare, or good zoning practice requires, the City Council may, by ordinance, amend, supplement, or change the regulations, district boundaries, or classifications of property. Any such amendment may be initiated by motion of the City Council or the Planning Commission, or by petition submitted to the Planning Director by the property owners or their agents of the land proposed to be rezoned. Applications may be submitted by persons other than the property owners provided that written acknowledgement of such action, signed by the property owners, is included with the application.

Sec. 24-2. Application Submission Schedule and Content. (12/8/99)

- (1) Applications for change of zoning district boundaries or classification of property may be submitted by the property owner, or prospective occupant with the written consent of the owner, at any time to the Planning Director. Applications shall include the following materials:
 - (a) A fully completed "Land Use Application," as provided by the Planning Director;
 - (b) The most recent surveyed plat of the property proposed for rezoning; and
 - (c) A non-refundable application fee of six hundred fifty dollars (\$650.00) plus one hundred dollars (\$100.00) per acre or portion thereof. (Amended 7/11/01)
- (2) Once the application has been submitted, the Planning Director or his representative shall review the application with the applicant. If conditions are to be proffered, the applicant is responsible for supplying a voluntary proffer statement outlining legally permissible conditions relating to the physical development or physical operation of the property, as outlined in Section

24-2.1 herein, and annotated with the following statement, signed by the current property owner:

"I hereby voluntarily proffer that the development of the subject property of the application shall be in strict accordance with the conditions set forth in this submission, unless amendment thereto is mutually agreed upon by the City Council and the undersigned."

If no conditions are to be proffered, a written statement to that effect must be submitted. Submission of either statement is required for the application to be advertised for public hearing.

Sec. 24-2.1. Permissible Conditions.

- (1) The current property owner may voluntarily proffer conditions that will supplement the specific district regulations to the extent that:
 - (a) the rezoning itself necessitates the conditions;
 - (b) such conditions have a reasonable relation to the rezoning; and
 - (c) all conditions are in conformity with the Comprehensive Plan.
- (2) When conditions include the dedication of real property or payment of cash for facilities, such property shall not be transferred nor such payment made to the City until the facilities for which such condition is intended are included in the adopted Capital Improvements Plan. The conditions shall provide for the disposition of such property or payment in the event it is not used for the purpose for which proffered.
- (3) Once proffered and accepted as part of an amendment to the Zoning Ordinance, such conditions shall continue in effect until a subsequent amendment changes the zoning of the property covered by the conditions; however, such conditions continue if the subsequent amendment is a part of a comprehensive implementation of a new or substantially revised Zoning Ordinance.

- (4) Once a conditional rezoning has been approved including either the dedication of real property of substantial value, construction of substantial public improvements or substantial cash payment toward such construction, and the need for such dedication, construction or payment is not solely generated by the rezoning itself, no amendment to the zoning map for the property subject to such conditions, nor the conditions themselves, nor any amendments to the text of the zoning ordinance with respect to the zoning district applicable thereto may be initiated by the City which eliminate, or materially restrict, reduce, or modify the uses, lot coverage, or the density of use permitted in the zoning district applicable to such property unless there has been mistake, fraud, or a change in the circumstances substantially affecting the public health, safety or welfare. This requires the landowner to pursue, in good faith, the completion of the development of the property.
- (5) Nothing in this section shall be construed to affect or impair the authority of the City to accept proffered conditions which include provisions for timing or phasing of dedications, payments, or improvements.

Sec. 24-2.2. Scheduling of Applications.

Once a completed application has been received, it shall be scheduled for public hearing no later than the second regularly scheduled Planning Commission meeting for which all required advertising and notification deadlines can be met; however, in the case there the Planning Director determines that additional information or review is necessary, the application may be scheduled for the third meeting for which all such deadlines can be met.

Sec. 24-3. Public Hearing Required.

- (1) The Planning Commission shall not recommend, nor the City Council adopt, any amendment to the Zoning Ordinance, including amendment to district boundaries or district regulations, until notice of intention to do so has been published once a week for two (2) successive weeks in some newspaper published or having general circulation

in the City of Hampton; provided that such notice for both the Planning Commission and the City Council may be published concurrently. Such notice shall specify the time and place of hearing at which persons affected may appear and present their views, not less than six (6) days nor more than twenty one (21) days after the second advertisement shall appear in such newspaper. Such notice shall also specify where copies of the proposed amendment may be examined. The Planning Commission and the City Council may hold a joint public hearing after public notice as set forth above. If such joint hearing is held, the public notice as set forth above need be given only by the City Council.

- (2) When a proposed amendment to the Zoning Ordinance involves a change in the zoning classification of twenty five (25) or fewer parcels of land, then in addition to the advertising as required above, written notice shall be given at least five (5) days before the hearing to the owner or owners, their agents, or the occupants of each parcel affected, all abutting property, and property immediately across the street or road from the property affected. If any portion of the affected property is within an R-OS Subdivision, then written notice shall be given to such incorporated property owners' association within the R-OS Subdivision that has members owning property located within two thousand (2,000) feet of the affected property. In the case of a condominium or cooperative, the written notice may be mailed to the unit owners' association or the proprietary lessees' association, respectively, in lieu of each individual unit owner. Notice shall also be given to the owner, his agent or the occupant, of all abutting property and property immediately across the street or road from the property affected which lies in an adjoining county or municipality. Notice sent by first class mail to the last known address of such owner as shown on the current real estate tax assessment records shall be deemed adequate; provided a representative of the Commission shall make an affidavit that such mailings have been made and file such affidavit with the papers in the case. (8/14/96)

- (3) When a proposed amendment involves more than twenty five (25) parcels of land, then, in addition to the advertising required above, written notice shall be given by the Commission, at least five (5) days before the hearing to the owner, owners, or their agent of each parcel of land involved. Nothing in this section shall be construed as to invalidate any subsequently adopted amendment because of the inadvertent failure of the Commission to give written notice to the owner, owners, or their agent of any parcel involved. (8/14/96)
- (4) When a proposed amendment would increase by greater than fifty percent (50%) the bulk or height of an existing or proposed building on a parcel located within one half (1/2) mile of a boundary of an adjoining county or municipality, then in addition to the advertising and written notification required above, written notice shall also be given by the Commission, at least ten (10) days before the hearing to the chief administrative officer of such adjoining county or municipality. (8/14/96)
- (5) A party's actual notice of, or active participating in, the public hearing required herein shall waive the right of that party to challenge the validity of the proceeding due to the failure of the party to receive the written notice required herein. (2/23/94)

Sec. 24-4. Referral to Planning Commission.

- (1) No changes in the district regulations, district boundaries, or classifications of property shall be made by the City Council until the proposal for such change has been considered by the Planning Commission, and its recommendation on such change forwarded to City Council. The Planning Commission shall hold a public hearing on such application or motion as provided by Section 24-3 above.
- (2) The Planning Commission need not confine its recommendation to the proposed amendment as set forth in the application or motion. If the

proposed amendment consists of a change in the zoning district regulations, the Commission may recommend a revision to the proposal. If the proposed amendment consists of a change in the zoning district boundaries, the Commission may reduce or enlarge the extent of land that it recommends be rezoned or it may recommend that the land be rezoned to a different zoning district classification than that petitioned for. In either case, the Commission may recommend a revision only if it is of the opinion that such revision is in accordance with sound zoning practice and is in furtherance of the purpose of the Comprehensive Plan; provided that before recommending a larger extent of land, or a rezoning to a less restricted classification than was set forth in the application or motion, the Commission shall hold a further public hearing on the matter, of which notice shall be given as in the original instance.

- (3) The Commission shall make its report and recommendation to the City Council in the form of resolutions duly authenticated. Such resolutions shall be forwarded to the Clerk of Council not later than thirty (30) days following adoption by the Commission.
- (4) The Planning Commission shall have one hundred (100) days following its first meeting after the amendment has been duly advertised to transmit its recommendation to the City Council. Failure to provide a recommendation within such specified time shall be deemed a recommendation of approval.
(8/14/96)

Sec. 24-5. Action by City Council.

- (1) Following a report to the City Council by the Planning Commission on any proposed amendment to this Ordinance, and before approving and adopting any ordinance or amendment thereof, the City Council shall hold at least one (1) public hearing thereon, subject to the public notice requirements as specified in Section 24-3 above.
- (2) Any amendments adopted by the City Council may be modified from the form in which they are

advertised, provided that before approving the rezoning of a larger extent of land or change to a less restricted zoning classification than was set forth in the application as advertised, the Council shall hold a further public hearing on the matter, of which notice shall be given as in the original instance. Council may approve additions, deletions, or other changes to conditions proffered by the applicant which are made prior to or during the public hearing, provided that such conditions, in final form, shall be set forth in writing and signed by the current owners of the property, in accordance with the provisions of this chapter, and shall be filed with the Clerk of Council before the Council shall consider the rezoning request on second reading.

Sec. 24-6 was repealed 10/23/91.

Sec. 24-7. Deferral of Application on Request of
 Petitioner.

Deferral of consideration of any application filed pursuant to this chapter may be requested by the applicant in writing at any time, however:

- (1) if the request for deferral is made prior to the publication of the notice of public hearing for either Planning Commission or City Council, whichever is applicable at the time, such shall be granted administratively, for a period not to exceed forty-five (45) days; or
- (2) if the request for deferral is made after the publication of the notice of public hearing, such shall only be granted with the consent of either the Planning Commission or City Council, whichever is applicable, for a period not to exceed forty-five (45) days.

Sec. 24-8. Withdrawal of Application.

Applications for a change in zoning shall not be allowed to be withdrawn from consideration after the first notice of public hearing thereon has been published by the City Council.

Sec. 24-9. Reconsideration Following Denial.

Upon denial of any petition to change the zoning district, no further petition of substantially the same nature, concerning any or all of the same property shall be accepted by the Planning Director within one (1) year of such denial, except by motion of the City Council.

Sec. 24-10. Fees.

- (1) The sum of six hundred fifty dollars (\$650.00) plus one hundred dollars (\$100.00) per acre or portion thereof payable to the City of Hampton shall accompany every application for change of zoning district boundaries filed with the Planning Director. Such fee shall be applied to the cost of collecting, reviewing, and reporting the facts and expenses related to the advertising and notification procedures required by law; such fee is non-refundable. (Amended 7/11/01)
- (2) If an application is deferred after it has been advertised for public hearing, an additional fee of three hundred dollars (\$300.00) shall be paid by the applicant for re-advertising the application: (Amended 7/11/01)

Sec. 24-11. Matters to be Considered in Evaluating Applications.

Proposed amendments to zoning district boundaries or to classifications of property shall be considered with reasonable consideration for the existing use and character of the property; the suitability of the property for various uses, the trends of growth or change; the current and future requirements of the City as to land for various purposes as determined by population and economic studies or other studies; the transportation requirements of the community and the City; the requirements for schools, parks, playgrounds, recreational areas, and other public services; for the conservation of flood plains; for the preservation of flood plains; and for the conservation of property and its value and the encouragement of the most appropriate use of land throughout the city. These considerations may include, but need not be limited to, the adopted Comprehensive Plan and Capital Improvements Plan, the timing of the proposed development, the relation of the proposed and existing development of utilities and public facilities;

and the net public costs of the development. Unless the application is sponsored by the City of Hampton, the City Council shall not approve an amendment to zoning district boundaries until any delinquent real estate taxes owed to the City of Hampton on the subject property have been paid. (Amended 1/8/97)

Sec. 24-12. Action by City After Approval of Amendment.

- (1) If the amendment to the Zoning Ordinance and Map is adopted subject to any or all of the conditions proffered by the applicant, as set forth in Sections 24-2 and 24-2.1 above, then the subject property shall be appropriately annotated on the Zoning Map, referencing the conditions as adopted. A Conditional Zoning Index, which shall contain a record of conditions attached to each such special annotation on the Zoning Map, shall be maintained by the Zoning Administrator.
- (2) Such conditions shall become a part of the zoning regulations applicable to the subject property, unless subsequently changed by an amendment to the Zoning Map, and such conditions shall be in addition to the specific regulations set forth in this Zoning Ordinance for the zoning district in question. Further, such conditions shall be administered and enforced by the Zoning Administrator in the same manner as all other zoning regulations, as set forth in Section 25-1 of this Ordinance.
- (3) Upon approval, any site plan, subdivision plat, or development plan thereafter submitted for the development of the subject property shall be in substantial conformity with all proffered statements, plans, profiles, elevations, or other submissions, and no development shall be approved by any City official in the absence of such substantial conformity. For the purpose of this section, "substantial conformity" shall mean that degree of conformity which leaves a reasonable margin for adjustment due to final engineering data, but conforms with the general nature of the development, the specific uses, and the general layout depicted by the proffered submissions of the applicant.